REPORT ON PROCEEDINGS BEFORE

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

REVIEW OF THE 2016-2017 ANNUAL REPORTS OF THE ICAC AND THE INSPECTOR OF THE ICAC

At Parliament House, Sydney, on Friday 1 June 2018

The Committee met at 9.15 a.m.

PRESENT

Mr Damien Tudehope (Chair)

Mr Ron Hoenig
Mr Tania Mihailuk
Reverend the Hon. Fred Nile
Mr Geoff Provest
Mr Mark Taylor
The Hon. Lynda Voltz

The CHAIR: Good morning and thank you for attending this public hearing of the Joint Committee on the Independent Commission Against Corruption [ICAC]. Today's hearing is to review the 2016-17 annual reports of the ICAC and Inspector of the ICAC. This morning the Committee will hear from the Inspector of the ICAC, Mr Bruce McClintock. The Committee will then break for morning tea and after that will hear evidence from the New South Wales ICAC, including the Chief Commissioner, the Hon. Peter Hall, QC, Mr Stephen Rushton, SC, and members of the ICAC's executive. At the outset, I thank the witnesses for making themselves available to appear today. I remind everyone to switch off their mobile phones as they interfere with the Hansard recording equipment. For the benefit of members in the gallery, I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines relating to broadcast of proceedings are available. I now declare the hearing open.

BRUCE McCLINTOCK SC, Inspector, Independent Commission Against Corruption, affirmed and examined

The CHAIR: I welcome Mr Bruce McClintock. Thank you for appearing before the Committee today. Before we proceed, do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

Mr McCLINTOCK: None whatever. I should perhaps say that I also have with me my Principal Legal Advisor, Ms Angela Zekanovic.

The CHAIR: Would you like to make an opening statement?

Mr McCLINTOCK: I am more than happy to do so, Mr Chairman. I am well aware that the purpose of the hearing is to formally review last year's annual reports. What had happened, of course, was that I took over on 1 July after the end of the year as to which I was reporting, so of course I had no personal knowledge then, as I said in the actual annual report. Probably it would be worthwhile updating the Committee on what has occurred since I last gave evidence in August last year. When I took over there were 23 outstanding complaints which had been received by the Inspector's office. Some of those complaints had been received in 2015. Some in fact had not even been acknowledged by the previous Inspector and Acting Inspector. I regarded it as my role first to do something, if I could put it like that, in relation to every one of those complaints.

I set myself the target of doing so by the end of August. I missed that target by four days but by 4 September I had written to every complainant asking what they wanted me to do with the complaint because some of them were so old that I thought they may not wish me to continue; in fact that did occur with some. In relation to one of those there was a statement that the complainant did not wish to go ahead but there was an issue that I regarded as of importance that I decided it was worth investigating of my own motion because I am empowered to do it under legislation so I undertook an investigation into that. I have not yet completed that for reasons I will also explain later.

As a result, a number of complaints just dropped away. There were some also that were plainly not within my jurisdiction or where plainly there was nothing for the ICAC to investigate. Since then I have resolved all of the outstanding complaints subject to this: There are three that I have not yet actually prepared reports in relation to; there are two that I will be presenting to the Presiding Officers next Wednesday. They are finalised subject to minor editorial changes. There are a couple of issues about anonymisation of some people in relation to them. I would be happy to talk about those if you wish me to but of course it seems a little perhaps inappropriate before I actually present the reports to the Presiding Officers, but I am in the Committee's hands about that.

As to the resolution of the other complaints, I have presented two reports to the Presiding Officers, which of course are now tabled and are public and I am perfectly happy to talk about that. As to the remainder, I took the view that the Presiding Officers would not welcome me trotting up Martin Place and bothering them every second week. Partly for that reason and partly because it is appropriate to do so, I have dealt with the majority of the complaints by letter to the complainant, as it happens in every case, dismissing the complaint. I will give full reports about each of those in my annual report, which of course is due by the end of October this year. But again I am happy to answer any questions about the particular matters if any member of the Committee wishes to ask me. The formal reports that I have submitted to the Presiding Officers so far are in relation to complaints by Mr Jeff McCloy, who you will be aware was the Mayor of Newcastle. You will also be aware of the inquiry in which he was giving evidence. There is another one in relation to a gentleman called Atkinson, who was a director of NuCoal. The Committee will also be aware of the inquiry in relation to that. He was a director of NuCoal.

I had hoped to deal with all the complaints by the end of the financial year, which is obviously in a month's time. Unfortunately I had three months sick leave, three months where I was unable to work. I will relieve the Committee of any concern about my health and say the issues are completely resolved. It was the kind of back surgery that men of my age frequently have, but I did lose three months, unfortunately. I am not where I was, where I wanted to be. The reason why I mention that is I said to the Committee in August last year that I regard, in a sense, my most important ongoing role the role that the legislation gives me to audit the operations of the Commission to ensure that it is complying with the law.

The complaints were obviously more pressing so I wanted to get them out of the way, indeed have to get them out of the way, so I can then turn to the auditing function. That is not to say I have done nothing in relation to the auditing, I have, and I will explain my interactions with the Commission. I wanted to say one other thing: The Committee will be aware of the material written by Mr Merritt of the *Australian*. There was one matter which he mentioned last week in his column, which has been mentioned previously. I have not come to a decision about this but I am considering taking it up as an investigation of my own initiative as I am entitled to under the legislation.

It is something that is of obvious public interest and the repeated nature of the complaints mean that the criticisms of the Commission should be resolved either way: either by being upheld and steps being taken or by being dismissed and the reasons for that conclusion being expressed. As I said I have not come to any conclusion about that. There was one matter which he mentioned last week which is the subject of one of the reports I will be presenting to the presiding officers on Wednesday next week as well.

Turning then to the Commission itself—I hope my remarks are not going too long—I have to say that I am extremely satisfied with the way the Commission is operating now. There seemed, to my observation, to have been a number of distinct improvements. Undoubtedly you will ask Mr Hall and Mr Rushton about their perceptions of how the three Commissioner model is working. You may remember the evidence I gave before I became Inspector supporting that model, I think it was in the first half of last year. I regard myself, and for that matter the Committee in Parliament, as having been vindicated by what happened. I believe that Chief Commissioner Hall will say the same thing.

There are a number of observable factors, for example, they now have three simultaneous inquiries going into potential corruption. That could not have happened under the previous model with one Commissioner, although there was the power to appoint acting Commissioners. It spreads the workload and the two Commissioners, who I have known for many years, are people of considerable ability. The model itself I think is working very well. Secondly, it is observable that the morale of the Commission staff has increased. That enhances the effectiveness of the organisation. I understand from talking to them, and we have been having relatively regular meetings, interrupted by my ill health, with the Chief Commissioner and whichever of the Commissioners are available, the Chief Commissioner has made it his business to talk to singly or in small groups every member of the Commission staff. That is obviously the sort of thing that enhances the ability to operate.

The other issue of course is the recent appointment of a Chief Executive Officer, which is something I supported. Again, because that has only just happened it is too early to talk about the actual effect. The announcement was only made late last week or early this week. I have reviewed the qualifications of the person appointed and having seen that he seems to me to be a perfectly appropriate choice. Again, I can say that the interactions we have had with the Commission itself have been positive. We executed last year, I think in mid August, it may have been a little later, a Memorandum of Understanding between the Inspector and the Commission and we have been complying with that.

It imposes obligations, for example, on the Commission to inform my office if they find an example of, I will not say corruption, potential misconduct amongst Commission staff members. That has occurred on one occasion and the Commissioner has resolved the matter internally satisfactorily from my point of view without my intervention. I share the resources of my office with the Inspector of the Law Enforcement Conduct Commission, Mr Terry Buddin, SC. The staff is Ms Zekanovic, my Principal Legal Advisor, and Mr Buddin's Principal Legal Advisor, and a Business Coordinator, Ms Armstrong. To my observation, that arrangement has been working well. We are in the course of being about to move offices but that is not because of me. It is because Mr Buddin has inherited some functions from the Ombudsman that include a secure monitoring unit and he needs to have place to put the two employees who will be doing that in secure circumstances, which cannot be accommodated in our existing offices.

I will just go back to the two matters that I am resolving next week by presenting the reports to the Presiding Officers. They relate to Operation Dewar, which the Chief Commissioner I think may be talking about. The other one is in relation to the complaints made by NuCoal. I only raise that one because it has been the subject of debate or questions in the Legislative Council. It is entirely a matter for the Committee obviously how the Committee proceeds, but if the Committee wanted a heads-up I am prepared to give it. It may be thought appropriate to do it in closed session so what I say to the Presiding Officers next week is not pre-empted, but again that is entirely up to the Committee. That is all I wanted to say by opening remarks. I hope I have not taken too long. Thank you.

The Hon. LYNDA VOLTZ: I did not catch the figure of the cases that had not been dealt with when you came in. What was that figure again?

Mr McCLINTOCK: It was 23. There is a slight rubberiness in that because there are some that were overlapping. But there are 23 and, as I said, some of them had not been acknowledged since they had been received in 2015.

The Hon. LYNDA VOLTZ: How many had not been acknowledged?

Mr McCLINTOCK: I cannot give you a precise answer to that. I think it was two or three.

The CHAIR: I will accept your offer of giving us a heads-up in relation to it and we will do that in closed session. Before we do that, I have only seen the McCloy and Atkinson reports to the House this morning.

Can you give us a summary of the complaint and your findings in relation to both those matters? I do not think members are across them. If specifically you are making any recommendations to us or to the Commission arising from those complaints I would be interested in that as well.

Mr McCLINTOCK: I am more than happy to do that. In doing so I will be saying some of the things I would say in closed session. I will focus simply on those two reports but, because Mr Atkinson was a Director of NuCoal, there is an overlap. Mr Atkinson's complaint was that the findings of corruption against him in effect made by the Commission had not been justified. He had been a director along with a number of other people against whom corruption findings had been made. It was in effect an allegation—I should be absolutely precise about this. I am sorry, I do not have a copy.

The CHAIR: I can give it to you.

Mr McCLINTOCK: All I need is the material at the end just because it is important in fairness to them. I should also say while am just turning up the relevant parts of the material that one other thing I have done is the Committee will be aware that one of the recent amendments to the legislation involved an imposition of a requirement on the Commission but also as a result an obligation—because in that respect I have the same obligations—to give notice of any proposed adverse finding to people who may be the subject of adverse findings and an obligation to incorporate their response. In relation to both these findings in both these reports I took the view that I was not making any adverse findings but that, simply because there is no decision that is not improved by hearing what the person the subject of the decision says about it, they should all be given a copy of my report in draft and I would incorporate any response they wished to make in the final report. I did that in relation to both of these. Mr Atkinson did send in a response. As a result I put in a supplementary report and I attached Atkinson's response of 9 March.

The complaint made by Mr Atkinson was in effect twofold. The first was related to the fact of the legislation passed by Parliament that terminated the mining rights which were the subject of the inquiry made by the Commission. The second complaint was the inappropriate interactions between the Commission and the then Premier. The reason why I reported on this one rather than dealing with it by letter was I principally thought the second matter was of sufficient importance for an immediately public resolution. The point I made in the report—and it is a point that I have made twice before in the 2005 report I did on the legislation and the 2015 report I did with Mr Murray Gleeson—is that ICAC is not a court. People frequently mistake it for a court. It is a specialist arm of the Executive—a specialist investigative agency which has had added to it the power to conduct public hearings and make findings of corruption.

Mr RON HOENIG: Maybe we should make it not look like a court. Maybe it should just be in a room like this.

Mr McCLINTOCK: That is something that I addressed in 2015 with Mr Gleeson. We have considered every available method of trying not to make it look like a court and trying to get across public understanding that it is not. Frankly, I think there is now nothing really that can be done. It is an issue but not for me, although I am happy to express views about it although probably not now. It is a matter for Parliament whether the ICAC hearings should be conducted in closed session. That is the model they have in some other States, but that is not for me to talk about now. The point about that is when one sees ICAC in the way I have said there is nothing wrong with the Commissioner of ICAC coming along to the Premier and expressing views about a matter of concern that he has come across. It is no different in terms of principle from, say, the Commissioner of Police informing the Premier of something that would be relevant to the Premier's performance of his duties or her duties as Premier. That was the point that I made. I also made the point in the report as to the problem of the Commission being seen as a court. I will not expand on the reasons. But those were the two matters.

I dismissed the complaint because I could not see on the basis of the matters that Mr Atkinson complained about that there had been any abuse of power, impropriety, misconduct or maladministration, which are the only things that I am empowered to inquire into. I might also say I think there is a public misperception of my role. It is reflected in the complaints because people come to me and people make complaints saying that the Commission was wrong. That may or may not be the case, but I cannot investigate that.

I can only determine whether it is, in effect, misconduct by the Commissioner or Commission officers. I am also limited in that because, for example, Counsel Assisting an inquiry is not a Commission officer so I cannot investigate alleged misconduct on the part of Counsel Assisting unless, for example, there is a wrongful failure on the part of the Commissioner or Chief Commissioner, as he is now, to supervise and control Counsel Assisting. I also take the view that unless it is directly relevant to what I am doing in my function, I should not express views about whether the Commissioner was right or wrong. I do not have the power to do so unless I am determining misconduct, which under the definition in the Act is the abuse of power, impropriety, misconduct or maladministration. That was Mr Atkinson. I expanded upon that and I am sorry.

In the case of Mr McCloy, I reported on that publicly to the Presiding Officers because there had been a considerable degree of publicity. I did not think that the complaint, which was essentially about the conduct of the then Commissioner and the treatment of witnesses and the Counsel Assisting in that particular inquiry, was justified. One of the reasons why I decided to report publicly was that the very same matters had been the subject of litigation by Mr McCloy in the Supreme Court and had been rejected by Justice McDougall of the Supreme Court. I wanted to say there as a general matter other than the general importance of the particular complaint that as a matter of economy of resources in future I would regard myself as having a discretion to not deal in detail with a complaint if it has been the subject of a determination by the Supreme Court dealing with precisely or substantially the same matters. I am conscious that I am expending public resources and that the time more I spend the more resources I have exhausted.

In this case, it was precisely the same matters. It had been dealt with be a very able Supreme Court Judge in an extremely competent and comprehensive way. That is the point I made in paragraph 12 and 13 of the report. I made that point, but because it was the first time I had done that, I did determine Mr McCloy's complaints on the merits and decided that, again, there was no abuse of power, impropriety, misconduct or maladministration. As I said, his complaint was about the conduct of the inquiries, the Counsel Assisting, the Commissioner and the treatment of witnesses. Justice McDougall said that the hearings were heated and that is undoubtedly the case. But he found that there was not any relevant impropriety and, as I said, I agreed. Thank you for that opportunity. Is there anything else the Committee wants to ask about those two reports?

Mr RON HOENIG: First, your view about the two organs of the Executive branch is clearly right.

Mr McCLINTOCK: Probably the best analogy of that is if you think about the FBI. Imagine an FBI with a specialist job of investigating corruption, which could hold public hearings and make findings, and then the FBI went along with the President and said, "We have just found out that Senator X has been engaging in a bit of corruption". Would there be something wrong with that? Of course not. It is the same situation.

Mr RON HOENIG: The second issue probably goes further because imputing motives into the Parliament that enacted the Act is an assertion that goes far further than just a conversation with the Premier.

Mr McCLINTOCK: It is. It was Parliament's decision; not the Premier's decision. In our constitutional system, as you all know, the decisions of the Parliament as passed in legislation are, in effect, sacrosanct. It is the supreme law of the State and it would be completely wrong and inappropriate for me to even embark on the consideration of whether that was right or wrong. That is not my job and, in fact, is not anybody's job. Parliament has spoken. That is it—full stop.

Mr RON HOENIG: The issue I raise arising from your conclusions about where the matter has been considered by the Supreme Court is that administrative law tests are so high that it is virtually impossible to succeed unless there is something that is so over the top that it attracts the involvement of the court. Is there not a gap between what the court may say and what you might conclude is improper conduct within your jurisdiction?

Mr McCLINTOCK: If I were to identify such a gap, I would determine the matter myself on my view of the merits of the complaint. That gives me the opportunity to be a little bit more precise. In saying that—and the McCloy report provides a good example—there was a finding of fact made by the judge that there had been no unfairness and there was nothing wrong with the way that the hearing was conducted.

Mr RON HOENIG: It is like an issue of estoppel then is it not?

Mr McCLINTOCK: In a sense, yes. It is a bit like that. If he had gone further and said something like, "The Supreme Court has no jurisdiction", I would not have taken account of that. It was simply because there was a factual finding on precisely the same material by a judge who said "No, there is nothing in this complaint about unfairness in relation to the conduct of the Commissioner and the conduct of the hearings." It is that kind of thing. As I said, if there was gap because, as you said perfectly correctly, the administrative remedy laws can be very hard to establish, there is no merits review of the Commissioner's decision—which is something that has been considered repeatedly by this Committee and its predecessors and which I have given evidence on. I accept what you say but I have that in mind and I would not let that stop me investigating. As it happens, there have been others like that and I have undertaken my own consideration of the complaint, even though there have been findings by judges of the Supreme Court and the Court of Appeal in relation to the matters.

The CHAIR: Are you of the view that the rules relating to procedural fairness, which the Commissioner adopts, would in fact dissipate some of the complaints that McCloy may have had?

Mr McCLINTOCK: Absolutely, although—I can recall the Chair asking me some of these questions and I was coy on the previous occasions—the real point about organisations such as the Commission is that they are heavily influenced by the character of the Chief Commissioner and the Commissioners. I think it was the

Hon. Trevor Khan who mentioned to me on a previous occasion the word "zealotry" and said that if you had a zealot in charge of the Commission there would always be problems. That was in the consideration of the adoption of the three Commissioner model, which dilutes the possibility of a zealot running the Commission. The real protection is the model that is now adopted and the necessary brakes on the decision. Of course, you are aware, because you passed the legislation, that one of important changes as a result of the three Commissioner model was that the majority of decisions are in relation to public hearings, which, again, can act as a brake. I hope I have answered your questions.

Mr RON HOENIG: Arising from that, I was going to ask later but I will do it now: Anecdotally, senior members of the Bar Association are engaged in some public hearings now.

Mr McCLINTOCK: Yes.

Mr RON HOENIG: The anecdotal normal complaints that one gets from senior members of the Bar seem to have stopped. My cursory inquiries have indicated a completely different atmosphere. A cursory examination of some parts of the transcript have indicated what appear to be very fair, unemotive and precise proceedings. They are the public hearings; I do not know what goes on behind closed doors. Is that because of the amendments to the legislation, or is that because of the nature of the appointments?

Mr McCLINTOCK: I would say both. I may say that I agree with you, Mr Hoenig. I took it upon myself, without giving the Commission any notice, to go and sit in one of the hearings—the one in relation to Canterbury Council—because I have been meaning to do that just to see—essentially, to consider—the issue that you have just raised, Mr Hoenig. I think I was there for about an hour; I appreciate that the hearings are much longer. On my observation, it was being conducted in a calm and civil manner. Again, this is all anecdotal, except for what I saw when I was observing. I have spoken to Counsel involved in the inquiries, not on any official basis, so to speak, but because I know them, and I have heard no complaints of the sort one used to hear regularly, as you know. There has been nothing like that. As I said, it was the Commission getting on with the job. As I said, I thought it was being conducted conspicuously fairly and without the degree of emotion that sometimes has been the subject of these hearings.

Mr RON HOENIG: The 2015 amendments to the Bar Rules would seem to govern in a more prescriptive way the way how Counsel Assisting needs to conduct themselves.

Mr McCLINTOCK: Yes.

Mr RON HOENIG: So that area that is beyond your jurisdiction but is certainly within the jurisdiction of the Bar to enforce?

Mr McCLINTOCK: It is. I do have outstanding complaints about the issue of conduct of Counsel. They have a degree of age to them now, unfortunately. Two of the ones I am going to resolve—which I have not yet resolved, as of three outstanding ones—involves that issue of conduct of Counsel. As I said, there are difficulties in dealing with it directly because Counsel Assisting is not an officer of the Commission, where my only power is. That was something addressed in the 2015 report because there is no question that the presiding Commissioner has a duty as Commissioner to keep Counsel under control, so to speak, and should do so. I would regard any wrongful failure on the part of the Commissioner to do that as misconduct on the part of the Commission, which of course I do have jurisdiction in relation to. But there are things that Counsel can do without the active sanction, so to speak, of the Commission that you could not possibly say reflected upon the Commission.

Mr RON HOENIG: What probably was not widely understood, except for those people at the Bar, is that so much of the direction of a matter is vested in Counsel Assisting. I do not know what the procedure is at ICAC, but in any of the other Commissions, generally, the discretion, knowledge and detail is all vested in Counsel Assisting as part of the checks and balances of the Royal Commissions and Commissions.

Mr McCLINTOCK: That is true. It all depends upon the particular investigation, the particular inquiry, the particular Commissioner and the particular Counsel. I was Counsel Assisting myself at ICAC in the early 1990s in an inquiry into Randwick Council and the planning department of Randwick Council back then. I do not think what you said would have been an accurate description of what I was doing. There was a special purpose Commissioner. An Acting Commissioner appointed this inquiry. It was very much a Commission, so to speak, investigation inquiry. It was very like a case you were briefed right at the end in, Mr Hoenig, where the stuff has all been done and you are there to present it to the court—in this case, to present it to the Acting Commissioner of the ICAC.

The CHAIR: You have told us that you have three hangover complaints. What is the complaint rate like at the moment? Have you got a number of other matters?

Mr McCLINTOCK: I cannot give you the precise figures, although Ms Zekanovic might be able to, of the number that have come in since 1 July, all of which I have resolved—it is 16. Many of them were very easy because clearly I had my jurisdiction. For example, there was one complaint that ICAC had failed to do things under Federal law. Of course, ICAC has no jurisdiction. That was vexatious, and I dismissed that. But there has been a whole series of ones like that, in which either clearly I had no jurisdiction or where the complaint could not—

The CHAIR: However, we have the three that you are yet to make a determination on. As of now, other than those three, are there others that you still have?

Mr McCLINTOCK: Other than the two I am presenting next week as yet.

The CHAIR: You will tell us about those, potentially, in a moment.

Mr McCLINTOCK: Yes.

Reverend the Hon. FRED NILE: I have two quick questions. One is that there has been a dramatic decrease in complaints, with 16 in this new period. It was 33 in the previous one. Secondly, you said you were dealing with all of them by correspondence. Did any of the complainants feel that they should have had an interview and presented their complaints to you in person?

Mr McCLINTOCK: Some of them have, Reverend Nile. That is a difficult question for me because my predecessors did meet with some of the complainants. I tend to feel that one-on-one meetings between the Inspector and a complainant and the complainant's lawyers is ill advised because I am drawing a balance between the rights of the Commission on the one hand, and the rights of the complainant on the other. I do not believe it is appropriate to hear from one side and one side only at one time. It is elementary. I have to give procedural fairness to the Commission as well. If I were to make an adverse finding against the Commission, I must give it notice as well. I have an obligation. Just as a judge would not hear from one side in a litigious dispute without the other being present, I think I should approach it on the same basis. I am completely willing to be told by the Committee or any member of the Committee that they think I am wrong and debate it. That is the approach I have adopted—right or wrong.

Of course, I have given every one of them ample opportunity to say whatever they want in writing. In every case where I have presented a report, I have given them a draft report to comment on and tell me that they think I am wrong. I have included in every report the response that they have given me, if they have given me a response. I do not think I should do more than that by way of actually seeing them face to face. When I have said that to them, I do not think there is anyone who has come back and said, "You're treating us unfairly." I have said to them all that I do not wish to meet them face-to-face—some of them have asked me. But none of them have said, "You're engaging in impropriety yourself in refusing to meet us." I hope that answers your question, Reverend Nile.

Reverend the Hon. FRED NILE: Some people may not be able to put matters in writing or explain their complaints.

Mr McCLINTOCK: I understand that, but most of the complaints have been prepared by lawyers. One complaint was not prepared by a lawyer, but clearly the man who did prepare it is very able and intelligent. I understand that and, like so many things, I am still in a way learning the ropes. I have been in the position for 11 months and there are some things I have done that I would probably do a bit differently now. I am perfectly prepared to listen. If someone came to me with a good reason, I would certainly consider it. The reason you have given would be a good reason. If I felt there was something they had not or could not articulate, I would consider that. So far I have not.

Mr MARK TAYLOR: I think you said you have not had an opportunity to do any audits at this stage. There was an issue about your access to telephone intercept material. Has that issue been resolved?

Mr McCLINTOCK: It has not been resolved in favour of the Inspector getting the material for audit purposes. I do not understand why there is a difference.

Mr RON HOENIG: Nor do I.

Mr McCLINTOCK: I can get it for complaints but not for audits. The issue is that it might very well be the case that the Commission's use of intercepts would be a matter that should be the subject of auditing. One of the matters has been the subject of auditing, not by my two predecessors but by Mr Harvey Cooper, who was the Inspector before Mr Levine. He regularly carried out a series of audits into how the Commission was dealing with search warrants. I will do that. But one can see the similarity between interest in warrants, telephone intercepts and so on. I understand that Mr Levine made a request for an amendment to the legislation that seems

to have been buried. If the Committee wished and thought it was appropriate, I would be more than happy to make a submission dealing with that issue.

The CHAIR: That would be helpful.

Mr McCLINTOCK: It would give me a chance to review it properly and update any issues raised by Mr Levine. I think it was in the first half of 2016, but I stand to be corrected. I would probably be informed, in a sense, by the overlap of my staff with the Law Enforcement Conduct Commission [LECC] Inspector. Of course, a very substantial part of what happens with the LECC begins with such matters, hence the secure moving of offices.

Mr GEOFF PROVEST: At its public hearing in November 2017, the ICAC told the Committee it had on foot a project to develop a proactive investigation capacity. Do you have any comments to make about the project? Will a move to a more proactive approach have other implications for how you carry out your oversight role as the Inspector?

Mr McCLINTOCK: I am not in a position to say directly what has happened to the proactive investigation capacity. Of course, members know about the increase in the Commission's budget, and I know you will be asking Mr Hall about that. My understanding is that that was one of the issues involved in that budget increase. My assumption is that that is something that will go ahead. The answer to the second question is yes, it will; there is no question about that. Mine is an oversight role and I must bear in mind that the Commission has things to do other than answer my questions.

Some of the questions I have asked have required extremely detailed investigations by the Commission. In addition, some of the personnel who are answering them were not there at the time in question. That is not entirely or completely true; Mr Waldon, the Chief Counsel, has been there for a very long time but others have not. As I said, I must balance my need to know with too much interference in the Commission's operations. However, I have a number of things in mind to audit when I finalise the complaints; I propose to keep my eye on a number of things. I will be very interested to know, in my capacity as Inspector, what is happening with that capacity.

Mr RON HOENIG: The application of the guidelines for procedural fairness that have been tabled can have a significant impact in an individual public hearing. For example, I refer to the guidelines for the Commission's duty of disclosure and exculpatory evidence. There is no statutory definition of exculpatory evidence. For the purpose of the guidelines it means "credible, relevant and significant evidence that tends to establish that a person is not engaged in corrupt conduct". That is a relatively high bar that can easily justify not disclosing. What is the person's remedy at the end of the day? Is reliance really upon the current Commissioner's good sense?

Mr McCLINTOCK: If a complaint is that exculpatory evidence has not been disclosed, given the legislation and the guidelines, and if I thought that it was credible, relevant and significant, I would take action. However, I am not saying what it would be.

Mr RON HOENIG: There is a difference between relevant and significant.

Mr McCLINTOCK: I appreciate that.

The CHAIR: It is a question for the Commissioner.

Mr McCLINTOCK: "Credible" simply means believable. "Relevant" means it can rationally affect the outcome. In relation to "significant", if it can rationally affect the outcome of the inquiry, it is significant. It may appear to be a high bar, but I do not think it is. Again, it all comes down to the quality of the people administering the legislation and applying the guidelines. I would imagine that the Chief Commissioner, the Commissioners and the Commission staff would ask, "Can this rationally affect the outcome of this inquiry?" If it can, it should be handed over. That is the test I would apply. That leads into an article in the *Australian* last Friday, which was about the Jasper and Acacia inquiries that involved, as you know, the conduct of Mr Obeid and Mr Macdonald. The allegation is that the characteristics of a particular witness were concealed, or not disclosed, and exculpatory is not the right word, but we are in the same universe.

The CHAIR: It may give rise to credibility issues.

Mr McCLINTOCK: Exactly. In appropriate circumstances, if it had not been disclosed I would consider it, in effect, to be a breach of the guidelines. If a person's credibility is worthless, it will obviously affect the outcome. It is that matter that I have in mind the possibility—as I said, I have not made any decision about it—of undertaking my own motion, because it has been the subject of repeated references in the press. My thoughts are that it is possible this matter should be dealt with either way.

The CHAIR: The other matter which is a repeated issue in the press is the failure to provide the Department of Public Prosecutions with material, which impacted significantly in relation to a decision by the DPP to prosecute.

Mr McCLINTOCK: Yes. That is an issue that I have raised directly with the Chief Commissioner—that is, the relationship between the DPP and the Commission. That was an issue way back in 2004-05 when I did the first report. Although the issue then was the significant and disturbing delays in deciding prosecution or no prosecution by the DPP. My observation is that that issue has been materially improved under the present regime and the relations between the DPP and the Commission seem to be working satisfactorily.

The CHAIR: Is it not an issue for you in terms of the process of the ICAC, that you identify what the process is for the purpose of deciding which material goes up to the DPP? Is that not a process which you would be interested to ensure is proper for the DPP to be able to make a determination on?

Mr McCLINTOCK: Absolutely, and as soon as the complaints are out of the way that is on my roughly notional list of the things I am going to look at.

The CHAIR: Because human beings make decisions.

Mr McCLINTOCK: Absolutely.

The CHAIR: In relation to whether that material is seen by the DPP, and in one specific case I am sure you are aware of, if in fact that material was there the DPP probably would not have proceeded, and it was the subject of an adverse criticism by a magistrate.

Mr McCLINTOCK: That was the matter I wish to deal with in closed session. Perfectly happy to do so.

The CHAIR: Thank you. We are about to have a closed session where the Inspector will brief the Committee on some matters on which he is about to release a report but has not yet. In those circumstances it is a briefing for this Committee. We will take that briefing and clear the gallery.

(The witness withdrew)

(Short adjournment)

PETER HALL, Chief Commissioner, Independent Commission Against Corruption, sworn and examined

STEPHEN RUSHTON, Commissioner, Independent Commission Against Corruption, sworn and examined

ROY WALDON, Executive Director, Legal Division, Independent Commission Against Corruption, sworn and examined

LEWIS RANGOTT, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined

JOHN HOITINK, Executive Director, Investigations Division, Independent Commission Against Corruption, sworn and examined

ANDREW KOUREAS, Executive Director, Corporate Services Division, Independent Commission Against Corruption, sworn and examined

The CHAIR: Good morning. I welcome witnesses from the New South Wales ICAC. I apologise for the delay. The Committee spent a lot longer taking evidence from Inspector of the ICAC than I anticipated. It was very informative.

Mr HALL: It was no inconvenience.

The CHAIR: Do you have any questions regarding the procedural information sent to you?

Mr HALL: No.

The CHAIR: Do you wish to make an opening statement?

Mr HALL: Since we last appeared before the Committee there have been a number of developments in the Commission. Accordingly, I have decided to briefly refer to those developments so that the Committee is informed about what is happening at the Commission. The first matter is the appointment of a Chief Executive Officer. The Commission engaged an executive search firm—Watermark—to undertake an executive search for the position of chief executive officer. The role was widely advertised in the press and online, and 49 candidates applied for the position. Following a series of interviews, a shortlist of five candidates was put forward to the Commission.

The interview panel was convened by myself, Commissioner Rushton and Ms Williams, who is the Chief Executive Officer of the Law Enforcement Conduct Commission. I tender the apologies of Commissioner McDonald, who is currently involved in a criminal trial and is unable to be here today. Commissioner McDonald was also unable to be on the interview panel for the same reason. Following the assessment through the interview panel, the panel was unanimous in recommending Mr Philip Reid for appointment to the chief executive officer [CEO] position. Briefly, a summary of Mr Reid's background and qualifications. He is a Bachelor of Science with first class honours. He is a member of the Australian Institute of Company Directors. I note that in the period from June 2014 to March 2018 Mr Reid was the Chief Executive Officer of the Royal Commission into Institutional Responses to Child Sexual Abuse. Prior to that time he has held a number of senior executive positions in public administration in Victoria, Queensland and the position I referred to in New South Wales. From April 2013 to September 2013 he was Chief Executive Officer of the Public Service Commission in Queensland.

Predating that, he was the Director General of the Department of Science, Information Technology, Innovation and the Arts, the Director General of the Department of Justice and Attorney-General, both in Queensland, and the Deputy Secretary of the Department of Premier and Cabinet in Victoria. The references for Mr Reid were quite outstanding. We are confident that he has got the necessary background to fit in very well, understanding how Commissions of inquiry work and interfacing with Government as necessary. We are very confident that he brings to bare all of the background. He has what is commonly referred to by my assessment, emotional intelligence. That means he is a people person. He is going to work well, as he did with the Royal Commission, and we are looking forward to him starting next month.

The next matter to report on is the establishment by the ICAC of its proactive investigative strategy. I have on a previous occasion advised the Committee that a determination was made that the Commission should, in addition to its long-standing reactive jurisdiction, also develop a proactive approach in the assessment of corruption risks and the investigation of corrupt conduct. In doing so I am satisfied that the Commission has always had the statutory basis for a proactive exercise of its jurisdiction. In that respect I refer to the provisions of section 20 subsection (1) of the ICAC Act 1988. The Commission has accordingly since early this year been establishing a unit to be known as the Strategic Intelligence and Research Unit or SIRU. The intention is to have the unit fully operational by 1 July this year.

Once established the ongoing objectives of the SIRU include the development and use of systems, processes and methodologies, the objectives of which are to enhance the Commission's capability: first, to identify through the use of strategic intelligence methodologies, individuals, organisations, departments or other entities who are involved, either as the principal or associate of the principal, in corrupt activities for referral to the investigation division; secondly, to develop strategic intelligence products that will inform and will guide, and in some cases recommend, courses of action to the senior executive in the allocation of the Commission's resources; thirdly, to develop a system of strategic intelligence products as a result of research which may help in the identification of emerging trends, issues, hot spots, corruption risks or threats to be referred to the Corruption Prevention Division.

It will also effectively liaise and assist the assessment section in the Commission of reporting various types of complaints and to produce regular strategic intelligence products for distribution within the Commission to inform and guide all staff on emergent risks and patterns or trends. The Investigation Division is currently trialling intelligence-led investigation theory on a preliminary investigation referred to the Division from the Assessment Panel. This process requires the operational intelligence analysts to gather intelligence in relation to the matter to allow the chief investigator to be better informed when deciding to move forward or not in relation to the matter. The process also allows for better allocation of investigative resources. There are presently two highly qualified officers who will staff this unit.

The budget position is the next matter to report on. Following my appointment as Chief Commissioner and the appointment of Commissioners McDonald and Rushton of Senior Counsel last August, the Commission decided to engage an independent external consultancy, namely KPMG, to conduct an independent analysis of its investigative and other resources and resource requirements and also to carry out a review of its operational systems. The evaluation and the review conducted by KPMG entailed exhaustive liaison with Commission staff and it resulted in an evaluation report with recommendations directed to enhancement of the Commission's capabilities. The report will form the basis for change, some of which has already been initiated, and it did provide the basis for the Commission's business case for additional recurrent funding, which was provided to the New South Wales Treasurer in February of this year.

Recently, the Commission was advised that an additional amount of $3.6 million was approved on a recurrent basis to enable the Commission to effectively and efficiently carry out its functions. This has resulted in the Commission's total expense budget rising to $27 million and it represents a 14 per cent increase on its revised expenses budget for the 2017-18 financial year. The additional funding will provide the means for increased resources to be deployed across the Commission, including, amongst others, the two part-time Commissioners, the recruitment of additional investigators, strategic data analysts and surveillance and corruption prevention staff. The additional funding will enable the Commission to operate at or close to its maximum potential. It will strengthen the functional capabilities in the key operating areas, namely legal, investigations, complaints assessment, and corruption prevention. The Commission was also provided with an additional capital funding of $500,000 per annum over the forward estimates period to 2021-22. It will enable the upgrade or replacement of various information, communication and technology equipment to meet the operational requirements. Whilst the budget does provide the capacity to the Commission to effectively undertake its core activities, it is recognised that budget challenges may arise as a consequence of unforeseen events and these will be appropriately addressed if and when they occur.

The next matter to report upon is the current public inquiries being conducted by the Commission. The Commission is currently conducting three public inquiries, operations Skyline, Dasha and Estry. Commissioner Rushton is conducting Operation Estry. Operation Skyline is primarily concerned with a scheme that involves proposals developed in the period 2014 to 2016 for the sale and development of the Awabakal Local Aboriginal Land Council's properties. The Commission is examining whether any Awabakal Council board director acted dishonestly and/or in breach of his or her duty as a board member and whether any other persons, including non-Indigenous persons, encouraged or induced any director to dishonestly or partially exercise any official functions in respect to the scheme. I am presiding at the Operation Skyline public inquiry which was conducted between 3 and 13 April and14 and 17 May. It is scheduled to continue one week in July, and then from 6 August until it concludes.

Operation Dasha is examining allegations concerning the former Canterbury City Council, including whether between 2013 and 2016 certain public officials improperly exercised their official functions in relation to planning proposals and/or applications under the Environmental Planning and Assessment Act 1979 concerning particular properties in the Canterbury City Council area. Other matters under investigation include the circumstances surrounding the appointment of a former director of city planning and whether certain councillors engaged in conduct that, or could have, adversely affected the honest or impartial exercise of the then general manager's official functions by expressly and impliedly threatening to cause the termination of his employment unless he appointed a particular person as director of city planning.

Commissioner McDonald is presiding at the Dasha public inquiry. Evidence was taken between 16 and 27 April. The public inquiry resumes on 12 June and is scheduled to continue until early August. Operation Estry, to which I have already referred, concerns whether in early 2014 Corrective Services officers based at the Lithgow Correctional Centre dishonestly exercised their official functions in relation to an assault on a prisoner, including by colluding to provide a false and misleading information, destroying or maintaining closed-circuit television [CCTV] footage and falsely representing that a quantity of buprenorphine was recovered from the prisoner's personal belongings during a search of the prisoner's cell. As I have said, Commissioner Rushton is presiding at the public inquiry, which commenced 21 May and is due to conclude during the first week of June.

The three-Commissioner ICAC model has made it possible for the Commission, as necessary, to prepare and conduct back-to-back public inquiries whilst also maintaining ongoing covert investigations in other matters, including one major investigation for which special funding has been provided. This would not have been possible but for the very impressive dedication and the application of the staff across all divisions of the Commission. I am conscious of the need to ensure that whilst the Commission's staff are ever ready to operate at such high levels of performance, the volume and the timing of work must be carefully controlled in their best interests as well as that of the Commission.

Members of the Committee, I would like to move to another matter, which involves public critical analysis of the Commission and its work. The ICAC at all times must operate to the highest standards in advancing and in protecting the public interest. I have in mind in saying that the provisions of section 12 of the Independent Commission Against Corruption Act. Like any other entity the Commission and its work is open to informed critical analysis: In particular, should it fail to meet the expected standards set for it. Specific oversight functions, of course, are also exercised by the Inspector and this Committee respectively under the provisions of parts 5A and 6 of the ICAC Act. However, that said, when ill-informed criticism is directed at the Commission and its staff, I see it is my responsibility to correct the record lest public confidence in the Commission be improperly undermined. That brings me to a matter upon which I wish to make some observations.

That concerns an operation undertaken by the Commission, Operation Dewar, involving a former Commissioner of the State Emergency Service [SES], Mr Murray Kear. There has been a number of media articles in relation to Operation Dewar which involved an investigation into the former Commissioner of the SES. The public inquiry in that investigation was presided over by former Commissioner Ipp. Assertions have been made to the effect that the investigation did not meet appropriate standards. These included a contention that the Commission withheld exculpatory evidence during the public inquiry. In fairness to commentators, including those in the media on this matter, it appears that they, in making these assertions, have relied upon or founded them upon certain observations that were made by a magistrate in the Kear prosecution that was brought under the Public Interest Disclosures Act, or the PID Act as it is often referred to, which followed the public inquiry.

I will avoid reference to the facts of Operation Dewar in which the Commission made corrupt conduct findings in relation, firstly, to the failure by the former Commissioner of the SES to investigate complaints that had been made against another senior officer of the SES, with whom he, the former commissioner, shared a friendship and, secondly, in relation to the termination of the officer who had brought forward the complaints and who pressed unsuccessfully for them to be investigated. I have closely examined Operation Dewar. I have provided a response to the Inspector in relation to a complaint that was made by the former SES Commissioner. It is my understanding that the Inspector, Mr Bruce McClintock, SC, will shortly furnish a report on the matter for tabling in the Parliament.

I wish only here today to say that in my response concerning the matter I have concluded, and I have submitted to the Inspector, to the following effect: First, there had been no improper withholding of any evidence in the public inquiry or at all that could in any way be considered to have constituted exculpatory evidence; secondly, that the evidence in support of the corrupt conduct findings made by the Commission was both cogent and compelling, and there was no basis for the conclusion that investigators improperly chose not to serve evidence on witnesses or improperly withheld relevant evidence from the former Commissioner of the SES because the evidence was contrary to the prosecution case; thirdly, that the investigation in Operation Dewar and the conduct of the public inquiry in it met the highest ethical and professional standards; and, fourthly, that the analysis of the decision of the learned magistrate, including criticisms of the Commission and criticisms of the Office of the Director of Public Prosecutions, was, with the greatest respect to him, both misconceived and wholly erroneous. The basis and the reasons for my conclusions and my submissions on this matter were of course included in my response to the Inspector.

Members of the Committee, that concludes my address on that aspect of the matter. I wish to move onto the next, which concerns the development within the Commission of its professional development program. Earlier this year I have pointed a committee to establish a performance development program within the Commission. The committee is headed by myself and consists of the Executive Directors of the Corruption

Prevention, Investigation and Legal Divisions as well as one Principal Lawyer from the Legal Division. The objective is to provide the staff of the Commission with the benefit of ongoing programs that address ethical, legal, statutory, procedural, corruption prevention and other functions. On 21 February 2018 a joint presentation was delivered at the Commission by two highly esteemed speakers: The first, the Hon. Keith Mason, QC, AO, formerly President of the New South Wales Court of Appeal, and Dr Simon Longstaff, AO, of the Ethics Centre. Each addressed public trust principles that are central to the work of the Commission, the former from the viewpoint of an esteemed lawyer and the latter from the viewpoint of an authoritative ethicist and philosopher.

On 9 May 2018 the second program was delivered by Jill Kiely, who is the Managing Director of the ICAC referral unit of the Office of the Director of Public Prosecutions. The presentation discussed disclosure, electronic service of briefs, and the early appropriate guilty pleas reform. A further presentation is scheduled for 3 July to be delivered by one of the Commission's Senior Forensic Accountants on forensic accounting principles. In passing I note that I have met with the Director of Public Prosecutions, and we have agreed to establish a small committee to ensure that all disclosure requirements that are required by the Commission are handled appropriately, and that all the necessary systems are in place to ensure that disclosure operations are fully complied with. That small committee, it is anticipated, will meet from time to time.

Finally, I wish to raise one further matter. That concerns a recent media article. In that recent media article, allegations were variously expressed, but in essence asserted that the Commission deliberately suppressed the contents of a medical report concerning a Mr Brook, who was called as a witness in the public inquiry in Operation Jasper, the suggestion being in this media report, that the medical report's contents were relevant to the witness's capacity and reliability. The most appropriate course for dealing with an allegation of that kind, if truly believed, would be to report it to the Inspector, who of course has ample powers to investigate such an allegation in an objective and independent manner.

The CHAIR: I will stop you there for a moment. I note that there is a cameraman who wishes to take photographs. A general provision of these committees is that you should not take photographs of papers. I can see that you understand.

Mr HALL: I understand that no complaint about this matter had been lodged with the Inspector. I understand that the Inspector is aware of the allegation. I wish it to be recorded that should the Inspector decide to investigate it the Commission is ready to supply all relevant information and material that he may require.

The CHAIR: Thank you. I take it that you have already conducted an internal investigation in relation to that matter.

Mr HALL: I have commenced an investigation of it in consultation with Mr Waldon. I cannot say I have done a complete investigation of it but we are well advanced. We have located material that could be available to the Inspector. I thought it inappropriate for me to otherwise publicly deal with this matter at this stage for two reasons. One, as I have indicated, is that the appropriate forum is that of the Inspector. The second is that there are criminal trials outstanding, to be heard next year. It is important that this space not be entered in a way which could, in some way, transgress the fair trial principle. But, in answer to your question, yes I have undertaken some investigations. I do not say that they have been completed but we are substantially on top of it.

The CHAIR: The three-Commissioner model appears to be working well in terms of allowing you to fulfil the workload requirements. You now have back-to-back inquiries running. How does it work in terms of making a decision about a public inquiry? What do the discussions look like around the meeting of the three minds with a view to taking those decisions? Following from that, have you had a disagreement about whether to proceed with a public inquiry? What prevailed upon your minds in relation to that?

Mr HALL: I am happy to address all of those points. We have regular meetings—monthly—in relation to all current investigations. We receive detailed reports before we meet so that we all develop a good understanding of the facts, issues and matters concerning individual investigations. When they reach a stage where there is enough information to be able to make a judgment call, we—Commissioner McDonald, Mr Rushton and I—meet to discuss and identify whether or not the material, which by this stage we are well familiar with, warrants a public inquiry.

In doing so we are mindful of the provisions of the Act and seek to apply and identify the benefits, disadvantages, repercussions and implications of conducting a public inquiry. We have done that on three occasions. We have kept a record of the decisions made. In each case, that has been the procedure. In each case the decision was unanimous that there should be a public inquiry and that it met the criteria under the Act.

The CHAIR: So there has been no inquiry yet where you have had a disagreement.

Mr HALL: Correct. That is so.

Mr RON HOENIG: Chief Commissioner, have you been made aware of the evidence given by the Inspector at the public hearing and the nature of some of the questions I asked?

Mr HALL: Sorry, I did not hear.

Mr RON HOENIG: Were you made aware of the nature of the evidence that the Inspector made to the Committee publicly prior to your arriving?

Mr HALL: No.

Mr RON HOENIG: I do not want to be repetitive. I want to save time. The effect of his evidence is that the Commission is going very well. Anecdotally, the material he has received—and I have—is that the Commission is operating in a very fair way. His view is that that is because of the nature of the legislation that has been amended and because of the nature of the appointments that have been made. I accept that. He gave us some evidence, in the absence of the public, in relation to some of the matters to which you referred so I cannot ask you a specific question lest I disclose what he told us and what is going to be in his report.

Mr HALL: Yes, I understand that.

Mr RON HOENIG: I am going to try to be relatively vague if I can. Some of the legacy matters involved criticism of the Commission, and therefore impacted upon the Commission's reputation in the past. It may not have been accurate criticism or may well have been criticism fostered by the way in which the Commission in the past had done things, but would not do it now because of the amendments to the legislation. Nevertheless, there is a disconnect between the criminal justice function and the Commission's statutory function and the evidence which you rely upon and the evidence that the court can rely upon. How, in the future, do you address that sort of information to the public to avoid that misunderstanding, which can impact upon the public confidence in the Commission?

The CHAIR: Other than through addressing this Committee as you have today, is there any other mechanism which you may be able to use to dispel this public perception?

Mr HALL: That is a very important issue. We have considered and discussed such matters. When we first took up our positions and consulted with staff we wanted them to put on the table anything they wanted to raise with us—problems they saw or how things could be done differently.

In the course of that there was voiced the question of dealing with ill-informed comment in the community—perhaps in the media or elsewhere—and was the Commission going to stand up for its staff when allegations were made and they seemed to be ill-advised? We have considered whether or not issuing responses to media articles or putting something on the website would suffice or go a long way to properly informing the public about what the situation is. We are not convinced that engaging with, for example, the media in a dialogue and a debate about issues is going to be effective. I have taken the view that we Commissioners do have a responsibility—firstly to the community but also to the staff, including investigators who are at the cutting edge of these things—to, where it is appropriate, stand up and make it known in an appropriate forum what the true position is. Hence my reference to the Operation Dewar matter here today.

And also in my ability to respond to a complaint when asked by the Inspector, the Parliamentary oversight mechanism and the Inspector's mechanism does provide, I think, a good forum, a proper forum where these matters can be dealt with and well-informed information or explanation is given. The problem is, however, that much time goes by before we can get before you or before the Inspector. The very rationale for establishing the Commission was to help restore and support public confidence in public administration—and Government, for that matter. If the Commission is undermined, as it is, in a sense, the guardian of the public interest to try and restore trust and confidence, but it is undermined itself in terms of the public's trust and confidence in it, then the public perception of this Commission could be irreparably damaged.

People, for example, are saying in some of the media that they are a cowboy outfit, they have got these enormous powers, and they do not exercise them responsibly. All of that is completely untrue. So we have not—or I certainly have not come up with any other magic formula whereby these matters can be dealt with on an informed basis. We would dearly like to think we could—beyond, as I say, the existing mechanisms in the public interest—be able to inform the public that the criticism is ill-informed for reasons which sometimes can be complex and hard to explain. Nonetheless, it is a concern of mine. As I have said, if we do not meet our own standards or the standards expected of us then it is important that people can criticise us.

Mr RON HOENIG: Hypothetically, a judicial officer makes a comment and it is published in the newspaper and a newspaper editorial is written, I as a politician read it, I know that there is this arm of the Executive with this extraordinary power, which is determinative, and I say, "Not again. Somebody else being treated unfairly that should not be treated like that in a democracy that has the presumption of innocence." I draw

an inference in respect of what I have read, and two years go by. It takes two years before someone gives an account that is reliable and trustworthy.

I could have been advocating a position in the Parliament and in public for the last year and a half and protected the Commission's reputation, as could all my colleagues here. But we draw the adverse inference, add it to one other error that we judge the Commission might have made, and we say, "This organisation is out of control. We have got to do something about it." So there needs to be some sort of mechanism. The Parliament has gone a long way now in amending the Act, making eminent appointments to try and have the organisation trustworthy. Like any investigator, you need people coming forward. You do not want people in morbid fear of going to give evidence before the Commission, who go there to assist the Commission, either. There are a number of things that I do not have the answers to but we need the answers to, to try to give the organisation—enhance its reputation in the public's mind, but also public trust so that people come forward and have confidence in every aspect of it.

Mr HALL: Could I just raise two points, one of which I will ask Mr Rushton to deal with. That is the actual experience to date with the implementation of the guidelines, which are designed to ensure that procedures are carried out in a way which does ensure fairness. The first, which I will deal with, is our use of the compulsory examination power. Properly used, that can have at least two benefits. One is it can give us access to information which we otherwise would not be able to obtain. The second is that it gives us an opportunity, and should be used as an opportunity, to evaluate the witnesses as to whether or not they are reliable—whether what they are saying is sufficiently reliable to put out in the public domain if there is a public inquiry. It can operate as a filter to guard against the public inquiry being conducted on a basis which attracts enormous publicity, but the evidence being given may be wholly unreliable and unfair for the person affected. I think the compulsory examination power, properly used, can assist in that way and ameliorate concerns that people's reputations may be trashed by unfounded evidence.

The second, if I might, the guidelines and the application to them to date have, I think, gone a good way towards ameliorating some of the concerns which by, demonstrably, application of fair principle in the course of a public hearing, people can perhaps have greater comfort that this is not some form of Nazi interrogation system, but that it is still required to comply with some rules of fairness as well as being an effective investigation agency. If I might, with your leave, ask Commissioner Rushton to deal with the second of those two issues, and that is the application of the guidelines.

Mr RUSHTON: It is certainly my belief and my observation that the amendments introduced by section 31B in terms of procedural fairness are now well understood as of extreme importance to both the workings and the reputation of the Commission. All staff involved in the investigation of possible corrupt conduct and the conduct of hearings are aware that those guidelines must be implemented. From the current inquiry that I am doing, Operation Estry, I can tell all of you that those guidelines have been rigorously applied. The Chief Commissioner has already indicated to you that the matter involves allegations of an alleged serious assault on a prison inmate and the subsequent collusion between corrections officers, including very senior corrections officers, to cover it up.

The Commission's website, as you probably know, includes a restricted portal where practitioners who would be seeking authorisation to appear for affected persons can gain access to relevant material in advance. That is what happened in this inquiry. So as to protect the forensic integrity of the investigation, not all material is published on the restricted portal before the public inquiry begins, and the timing is a matter which is discussed and was discussed in this particular inquiry before it commenced, with Counsel Assisting myself and investigation staff. Perhaps the most common example where material is sometimes not published in advance is the transcript of what a witness has said during the previous private compulsory examination. You can well imagine, I am sure, that this is entirely appropriate in the case where there are allegations of collusion. To publish transcripts of compulsory examinations in advance might lead those against whom the allegations were made to put their heads together, so to speak.

The procedure I adopted was to ensure that, immediately following and sometimes prior to a witness giving evidence, that the witnesses that had previously been examined in a compulsory examination, their transcript was put up on the restricted website so that various legal practitioners that appear for affected people—and their clients, the affected people—could consider it before commencing their cross-examination of the witness. On a number of occasions I indicated to the legal representatives that if they needed more time to consider that material then time would be granted. As I recall, no-one has sought additional time. Can I also say that in Operation Estry, in accordance with section 31B, I have not limited cross-examination of witnesses as to their credit. The credit of various witnesses in this particular matter, including two inmates, is a critical issue.

Could I say more generally, in terms of disclosure, a committee has been established which will be chaired by Commissioner McDonald to develop policies and procedures to ensure that exculpatory material will be identified, investigated, monitored and disclosed to affected persons and, in the case of referrals to the Director of Public Prosecutions, to the director. You might appreciate, the Commission often receives vast amounts of material, and as an investigation progresses, material not thought to be relevant, including exculpatory evidence, becomes relevant. The challenge is to monitor that material, to monitor its relevance and to ensure that in due course and at an appropriate time it is disclosed. I can confirm that that is what this committee will be designed to do, and these policies and procedures will be developed with that in mind, so that we do not miss anything and that evidence that should be disclosed will be disclosed in a timely manner.

The CHAIR: You will be aware—again, it is in the public domain—of a situation which was alleged to have occurred in relation to evidence given by a former Premier of this State, which appeared to contradict what was said in the public arena. Are you saying to me that that is either wrong or it would not occur again?

Mr RUSHTON: As far as I am concerned—I am not quite sure which matter you are referring to—I can tell you, subject to human error, of course, you can never discount that entirely, but the approach of the Commission now in its public inquiries is to ensure that there is a proper review of what is relevant to the inquiry and we bend over backwards to ensure that at an appropriate time, consistent with maintaining the forensic integrity of the investigation, material is released. It may be, for example, that in a compulsory examination we ultimately release to the affected people there could be material in there that we would not necessarily regard as exculpatory but, because of the knowledge held by witnesses, it may be. So we have to take a very cautious approach. I can tell you in Operation Estry I think it is the case, and if it is not the case presently, because there are still some examinations to go, they will have, by and large, all the material we have got.

The Hon. LYNDA VOLTZ: Just a comment on that. I suppose one of the problems is that papers can make any inference they like to some regard and it is very difficult unless you are in a forum such as this to present an alternative view. It must be extraordinarily difficult when you are dealing with some of the mainstream press that have had some recent Press Council rulings against them in regards to what they say about people. I just want to go back to the budget issues that you raised. You have got an additional $3.6 million, and that brings you back to $27 million, is that right, because you did have some cuts?

Mr HALL: Yes, we did—the cuts in 2016.

The Hon. LYNDA VOLTZ: Will you get the full $27 million for all of the 2018-19 financial year?

Mr HALL: Yes, we will. I have Mr Koureas here, who can confirm that. He manages our corporate governance.

Mr KOUREAS: Yes.

The Hon. LYNDA VOLTZ: You have got the proactive, strategic intelligence—the two people that you wanted to put in—that you raised in the November meeting last year.

Mr HALL: Yes.

The Hon. LYNDA VOLTZ: Does that $27 million and the $3.6 million deal with the extra $2.5 million that you were talking about at the last hearing? Has it allowed you, for example, to go from three investigation teams back up to four?

Mr HALL: It will enable us to get back to four teams. There will be an additional nine permanent investigators, an additional two officers in corruption prevention, and an additional officer in the assessment section, which assesses the matter at the outset.

The Hon. LYNDA VOLTZ: And that will mean that you will not have to rely anymore on temporary investigators, because I think that last year you spent $800,000 on temporary investigators?

Mr HALL: Yes, that is true. I have in mind at the moment two particular officers—one of whom is on secondment and another one, who I think is on a temporary contract—have both proven to be outstanding and they have been approached to stay on.

The Hon. LYNDA VOLTZ: You are trying to steal them off someone?

Mr HALL: I am sure those agencies that have released them on secondment to us will not be happy if they do not return. Some of the, as it were, temporary, short-term contract people have enabled us at least to get on with building up the investigations that have now turned into public inquiries. It would not have been possible without all that temporary staff being taken on over the last few months. But going forward, the intention is to have permanent officers. The importance of that, of course, is they build up corporate knowledge and

understanding of systems and methods, which short-term employees are not fully versed in or cannot be sometimes fully versed in. So it is important to replace short-term employees with permanent employees and that is going to happen in the numbers I have mentioned.

The Hon. LYNDA VOLTZ: You got KPMG in to do a report. Part of that, I assume, was the restructure, but was part of that also because of the budget cuts and you needed to look at what your actual needs were?

Mr HALL: Yes. It was primarily done as an exercise both to assess our resources, as I said, and also to undertake a review as to the adequacy of our systems. That was the primary motivation. But it became apparent, as we went, that it would become the evidence-based business case that we could present and did present to Government, simply because it had been thoroughly researched by an external consultancy rather than us assessing it ourselves.

The Hon. LYNDA VOLTZ: As a result of that report you then got the recurrent increase, the $3.6 million, back.

Mr HALL: Correct.

The Hon. LYNDA VOLTZ: How much did the KPMG report cost, the consultancy report, do you know?

Mr KOUREAS: That cost $63,000 excluding GST.

Reverend the Hon. FRED NILE: Is it possible for a copy of the KPMG report to be given to the Committee?

Mr HALL: Yes. There would be no reason not to. I have a copy here; we can make it readily available during the course of today or next week.

The CHAIR: I notice you have been doing a fair bit of country work.

Mr HALL: I have been to Orange this week. We have had a team from our corruption prevention people spreading out from Orange, Dubbo, Forbes and other centres to interface with community leaders, to explain to them what we do, but also to provide workshops. I went down on Tuesday, Wednesday with the new Ombudsman, Mr Michael Barnes. We both addressed those in attendance. Two things came out of it. We were impressed by the way in which the local people appreciated Sydney people coming to meet them and discussing these issues. Secondly, there were people in various positions, one of which, for example, is the fairly new position of Internal Ombudsman within councils. That is, apparently, a growing field and, as a result of the contact that I had with one of those officers, we are now going to follow-up to see whether or not perhaps we should have an ongoing dialogue with that group. Somebody within council said to be independent could be a very valuable source for us going forward.

These outreach programs, as we call them, seem to have grown in interest. We have another one scheduled for Wollongong later this year and the team we engage are extremely good at organising it, getting together the materials used and those conducting the workshops. I believe it is important that the Commission has a presence in regional areas. I think the ICAC—and I mean no criticism of this—has been very Sydney-centric in its operations. There is no reason to believe that the sort of problems we uncover stop at the boundaries of Sydney, and we know from the reports of investigations interstate that corrupt activity, of course, does occur in small, close communities sometimes, in regional cities, and it is important that they are on our radar as well as the city of Sydney.

The CHAIR: I think it is an excellent initiative.

Reverend the Hon. FRED NILE: Now that there are three Commissioners, as you know, and you are the Chief Commissioner, I gather from the Inspector that you plan to hold simultaneous inquiries and each of those Commissioners will conduct an inquiry?

Mr HALL: Yes, the present position is that there is overlapping of the three mentioned proceedings. That does require quite a bit of planning and organisation work. However, I am mindful of the fact, having conducted these three inquiries, it has put very heavy demands on the staff.

Reverend the Hon. FRED NILE: That is a question I was going to ask you: How are you staffing that and where do you have the premises to conduct three inquiries?

Mr HALL: Yes. There are two things about that. Each of these inquiries has basically had its own separate team working on them—investigators, lawyers, support people and others. It is very resource-intensive work. Where possible we avoid having a clash between the inquiries. However, there has been necessity for us to, as it were, borrow the hearing room from the Law Enforcement Conduct Commission to conduct some compulsory

examinations, which we have done, and in July I will be spending a week at the LECC's premises to conduct a further public hearing there while Operation Dasha is proceeding in our main hearing room on our premises.

With the goodwill and cooperation from the LECC we have been able to, as it were, overcome these double booking arrangements but I am mindful there is a limit, as I indicated before, beyond which I should not push the staff to be operating too many inquiries at any one time or in any one period but I think that with the increased resources I discussed earlier, it will become somewhat more feasible to do what we have done thus far with using a mix of part-time and permanent employees. I think it has given the Commission greater capacity to get through its workload being able to proceed in this way.

The CHAIR: Has there been a decline in complaints?

Mr HALL: No, an increase, I am told. I will ask Mr Hoitink to answer as he is closer to the action.

Mr HOITINK: At the moment we are probably carrying close to double what we were last year as far as ongoing investigations.

The CHAIR: What is the response time for a complaint? You generally set yourself 28 days, I think.

Mr HOITINK: I understand it is 28 days for the assessments—I might have to be corrected by our assessment's manager on that fact. We have 120 days for a preliminary investigation and then 16 months all up for a major investigation.

The CHAIR: Are you meeting those targets?

Mr HOITINK: At this stage, yes. The only change would be in relation to some of the preliminary investigations that we have got in. Because there are so many at the moment I have had to stagger sending those out to the teams because they are carrying quite heavy workloads, so some of the key performance indicators—

The CHAIR: As to complaint patterns, are you able to identify any particular public sector area where complaints are coming from?

Mr GEOFF PROVEST: Hotspots?

The Hon. LYNDA VOLTZ: Trends.

Mr RON HOENIG: I guess local government might be one?

Mr HOITINK: I think from recollection of the report certainly local government is well up there—corrections, transport and I cannot recall the other one.

Mr HALL: Generally procurement.

Mr HOITINK: Procurement certainly.

The CHAIR: Will the Strategic Intelligence and Research Unit be a valuable tool in being proactively able to address hotspot complaint areas and to perhaps put in place mechanisms to more adequately deal with corruption issues?

Mr HALL: The answer is yes. Similar units have been established in Queensland, Western Australia and Victoria, although Queensland is a bit different because its crime jurisdiction is a very extensive one. In those other Commissions their similar unit has been absorbed into the corruption prevention divisions. I have taken the view that it is better to have this unit interfacing with both investigations and corruption prevention—CP as we call it because, for the very reason you mentioned, in terms of identifying emerging risks and trends, it is equally important from both investigations and corruption prevention that they are keeping pace with known organisations and known persons whom we suspect are engaged in corrupt activities. The gaps in the corruption controls are identified as of direct relevance to corruption prevention work. If it is left as part of corruption prevention, as is the situation in at least two other agencies I am aware of, I fear it would not feed into investigations whereas it is Mr Hoitink's role to ensure that the strategic intelligence can be used in an operational sense in directing and facilitating investigations and lines of investigation; in other words, it is an agency that sits in the middle.

Our databases are immense. Names become very familiar to us over time and different investigations. Those names are sometimes disguised behind, if you like, corporate entities. To be able to mine and take hold of all this disparate information involving familiar entities is a formidable task. The idea of this strategic intelligence approach is to be able to, through sophisticated data systems, which we have are acquiring or have already acquired, will facilitate the cross-referencing and identifying patterns, so on and so forth, which will inform our investigations. We are optimistic that it is going to enhance our capabilities and it is in line with modern investigative methodology.

The CHAIR: If in fact we are identifying a particular trend, will the model you use mean that the SIRU will start knocking on doors?

Mr HALL: Not really. I might invite Mr Hoitink, with your leave, to address that question.

The CHAIR: Yes.

Mr HOITINK: It is not so much knocking on doors. Their role will be to gather the data that is required to assess the information they have got and then that information will go through the normal assessment processes the same as any other complaint that comes in. Once they put all that together it will be referred via the assessment process either to the corruption prevention—

The CHAIR: So the complainant effectively is the SIRU?

Mr HOITINK: That is correct.

Mr GEOFF PROVEST: I have a couple of questions and they are a bit varied. The Committee noted that in November 2017 a memorandum of understanding [MOU] was concluded with the ICAC and its Inspector. Is the MOU operating well in practice and could you please comment on the ICAC's working relationship to date with the Inspector?

Mr HALL: Yes, I am happy to do that. I think I advised the Committee at the outset that we met with Inspector to ensure that we would be able to work well and effectively together and that has proven to be the case. He has, in a number of matters now, requested information. We endeavour wherever possible to have a very quick turnaround in providing him with information. I think I can say in the main that has happened. We have had no problems from his end or complaints that we have not provided him with what he wanted. We have had two meetings with him, as I recall it, since we started simply to review any outstanding matters that he was working on that needed assistance or more information and we would make available within our staff whatever information he was requiring to be identified so that it could be supplied. Speaking for myself, I think we have a view that although we have two very different roles, at the end of the day we are working in the same direction in terms of public interest. Mr McClintock is a very experienced lawyer, very intelligent and very proactive so far as I can see. We three Commissioners fortunately have a good personal relationship with him. We commend him as a person who is obviously ideal for the role. He exhibits also to us enormous efficiency notwithstanding the fact that he is also a busy practitioner at the Bar. His staff have also been excellent to deal with, so no problems thus far.

Mr GEOFF PROVEST: My second question has two parts to it. You touched on various components of this when you were talking about the public or community's perception on the role of ICAC and how you are intending to improve that. One of the areas—I being a politician out in the community—was about the relationship between the Commission and the DPP in terms of the speed of cases and that they tend to go into the never-never. How would you describe your relationship with the DPP—you touched on going out in the community—in terms of the speed of dealing with some of those cases?

Mr HALL: I earlier mentioned that we met with the DPP. He came to our offices possibly about six weeks ago from recollection. We all discussed issues of importance which include, as Commissioner Rushton has referred to, the questions of disclosure. Like us, he is very concerned to ensure that everything is done so that information does not get overlooked—I am talking about inadvertent overlooking of material that his office needs. We discussed the question of needing to constantly update our database systems in order to ensure that we are able to utilise technology to the best advantage to minimise human error. It was at that meeting that we discussed and decided upon establishing the committee that Commissioner Rushton referred to.

Commissioner McDonald, who is engaged to do prosecution work in the criminal area, has a particular interest in disclosure requirements. Of course, it is part and parcel of what she does. She has volunteered to steer that committee from our point of view. In terms of the history of matters referred to the DPP, there was a history of long time lags. I am not quite sure of the reasons for that occurring. Those days are over. There are much more efficient systems. In terms of time and the like, I am not in a position—but I can get the information if the Committee requires it—to give you updated figures. I think, however, Mr Hoitink may have some overview. He may be in a position to address the question of time delays, or Mr Waldon perhaps might be better.

The CHAIR: It is buck-passing.

Mr WALDON: We have recently renewed our memorandum of understanding with the DPP and that sets out ideal time line for, once we get a brief to the DPP, how long it takes them to assign a lawyer to it, letting us know who the lawyer is, and have we got a contact person. There is meant to be a meeting within a period of time with the DPP then to discuss the brief. Then if there are requisitions then we need to respond to those. We have not quite started this, but we are going to start to move to electronic briefs. So instead of sending the DPP

basically cartloads of hard copy information, it will be the same information but it will be in electronic form—you just have to press the button and it will appear at the other end. All of this is being designed to help speed up the process. It does rather depend on resources both at our end and at the end of the DPP. Sometimes those time lines are not always met but we have established close liaison with the two groups who in the DPP deal with ICAC matters. The idea is that if there seems to be any delay emerging then we communicate with one another about those delays and see what we can do to remedy them.

Mr GEOFF PROVEST: Is there a benchmark that you are looking at, to do more than 70 per cent or 60 per cent? What I am referring to is the way we do our emergency departments in our hospitals and our triage times and things like that.

Mr WALDON: It is a little bit difficult because some briefs we send are fairly straightforward and they are not complex and certainly they should be dealt with quite speedily. Other matters have quite a large degree of complexity about them. For example, the mining matters would fall within that category. Some of those matters are currently before the courts. Some of those matters are still with the DPP at the stage of assessing whether there is sufficient evidence to recommend prosecution or not. It rather depends on the nature of the matter and whether we are talking about a complex brief, how many people might be involved and the possible offences.

The CHAIR: Can I take you back to Dewar? A cost order was made in relation to that matter.

Mr HALL: Yes, that is right.

The CHAIR: No appeal was made in relation to that. Was your advice sought in relation to it?

Mr HALL: Again Mr Waldon was closer to the action at the time than I was. I was not there at that time but my understanding is that the DPP did consider the question of an appeal. It is not the practice of the DPP to provide us with their advice if it is in writing. The matter was considered and for reasons that I have been not been able to ascertain the DPP decided not to—

Mr RON HOENIG: There would be restrictions on the DPP himself as to when he would decide to appeal against an acquittal like that too.

The CHAIR: Not the acquittal; the cost order. In terms of the process of this, as I understand it, the relevant DPP officer—I might be wrong on this—made a recommendation that the costs should have been paid by ICAC.

Mr HALL: I cannot help you on that. I do not know if Mr Waldon has anything.

Mr WALDON: I do not know about that but they certainly were not paid by ICAC. The costs order was against the DPP and as far as I am aware the DPP paid it.

Mr RON HOENIG: Can I ask a corruption prevention question in relation to a local government speech I gave in Parliament last week. The Local Government Act requires open meetings of councils and council committee meetings. I suppose as part of the sunlight, the disinfectant against corruption, a practice has developed in local government relatively recently whereby councils abandon their committee meetings and give councillor briefing session behind closed doors. Then they produce a sanitised report that just sails through the council with minimum dispute and discussion. Even the independent planning and assessment panels which replaced councillors because of corruption risks are getting their reports to them. Development applications are public, but they are getting these private briefings from the council planners before they even turn up into a public forum. So the public that are impacted have no idea what they have been told behind closed doors.

That seems to me to be probably an unlawful way of going about it—certainly improper—but it is now so widespread. I have called for the Office of the Local Government to involve themselves, but they are a tiny little organisation in Nowra. Does the Commission have any role? I am not suggesting anything improper or corrupt is going on now but it looks to me like it is going to be the classic recipe for nobbling councillors and someone is going to slip stuff through. Does the Commission have any proactive function like that?

Mr HALL: With your leave, I might ask Mr Rangott, who heads up our Corruption Prevention Division, to respond.

Mr RANGOTT: Mr Hoenig, the short answer is yes. We would be very interested to read your speech and even discuss your concerns with you in a private session, if you do not mind me saying that. I am aware that that practice is going on. I am interested in your comments that that seems to be an area that is growing. These developments that were brought in with the independent hearing and assessment panels are sound, and other forms of decision-making should seek to adopt the logic of those IHAPs. Private briefings about matters that are meant to be for the ears of the public is a concern. We are quite keen to hear from you and investigate that further.

Ms TANIA MIHAILUK: Canterbury-Bankstown Council would have about four meetings a month, of which three are private briefings. That is exactly what Mr Hoenig is talking about. That pattern is a problem over time. When I was the Mayor of Bankstown about five or six years ago the reverse occurred; there might be one briefing a month and the rest were public meetings.

The CHAIR: Is the process involving IHAPs approving development applications a good one?

Ms TANIA MIHAILUK: There is still a role for councils.

Mr RANGOTT: I think the logic is that councillors are making decisions based on the papers presented to the public and not other information. All the information they need should be in those papers.

Ms TANIA MIHAILUK: I agree.

Mr RANGOTT: I accept that there are some situations where information is commercial-in-confidence.

Mr RON HOENIG: One council had an entire budget briefing behind closed doors. A $100 million budget sailed through after three minutes of discussion. That is what is happening. I am not suggesting that anything corrupt is occurring, but it seems—

Ms TANIA MIHAILUK: It is a recipe for disaster.

The Hon. LYNDA VOLTZ: This gets back to the fundamental argument of public disclosure of information and how you get organisations to put information in the public domain before a decision is made. That is true whether it is a development application at a council level or a decision made by a government to build a stadium over public parklands. I am meeting with the Information and Privacy Commissioner next week. There is a systemic withholding of information, whether it involves a local government decision or a State Government decision, to such an extent that there is no public knowledge of what is happening in the public domain. A good example is the Allianz Stadium.

There has been a community consultation process involving three meetings at which no plans or designs were presented to the community so they know what is being proposed while that is part of an environmental impact statement process. As we saw in Parramatta, the community did not see the designs and their concerns were confirmed when their swimming pool was ripped out with no consultation. The problem for ICAC is that people cannot necessarily tell what is going on because of the withholding of information. It seems to be more systemic in local government areas where councillors are not making decisions. Many of the decisions are being taken out of their hands.

Mr HALL: Of course, it is true that the less information available to the public, the less accountability there is. Many development applications do impact on the public in various ways, not only neighbours or the property owner. In general terms, the public should have enough information about any development that could impact on the environment or on the proposed development area. People should be informed and they should be able to determine for themselves whether there are good arguments for or against it rather than it being done in a closed fashion. That raises suspicions and, again, public trust and confidence are diminished. In the longer term, I agree with the sentiments you are expressing; that is, privacy can be conducive to corruption risk. If it is done in a private fashion, the chances of identifying and putting in place corruption risk management strategies are diminished.

Mr RON HOENIG: A number of years ago the ICAC conducted a public inquiry in relation to, I think, consultants or lobbyists.

Mr HALL: Yes, it did.

Mr RON HOENIG: There were no persons of interest; no-one was being fingered as doing anything wrong. The Commission received a variety of evidence and investigated a variety sources, and it was able to make some recommendations based upon a non-adversarial system. When the Commission embarks on an investigation involving persons of interest and it is looking down a particular path, it then makes recommendations. However, that is not the purpose of its investigations. Local government operates in a particular way.

I know from politicians who have been charged with offences, I have appeared for alleged murderers and I have seen from Royal Commissions that the Bar and judiciary do not know what is in politicians' minds when they are making decisions, so it can look strange. If an investigation or inquiry does not involve a person of interest and information is being gathered from every source, the Commission may well, if it has the resources, be able to make meaningful recommendations that could be adopted across the board.

The CHAIR: Like a guideline judgment.

Mr HALL: Yes. Commissioner Rushton reminds me that we are planning to have one major project a year undertaken by our Corruption Prevention Division in addition to its other prevention activities and the reports it produces in relation to other matters. There are areas that need to be the subject of special projects. Such a system will enable the Commission to engage with stakeholders to obtain evidence. We are considering whether that special project should be in respect of procurement. We keep getting complaints and notifications about procurement abuse. It seems to me that there is a place for a more general review. All the agencies have the requisite database systems and so on to detect and to prevent procurement abuse, yet we still receive complaints. There is something wrong, either with the system or the human factors that go with the system, that accounts for the continued unhappy story of procurement abuses, which cost the State dearly over time.

Reference was made to lobbying. It was last examined by the Commission 10 years ago. It is time for us to consider whether we should have another look at that area. Whether that should be a special project is yet to be determined. As we speak, work is being done on examining areas such as lobbying by way of a comparative exercise to see what the standard is in other States and other countries and jurisdictions to determine whether that should be the special project for the next 12 months. I envisage that we might approach it in a somewhat different fashion from the approach taken in the past.

That would involve engaging, on a consultancy basis, two esteemed and highly regarded experts in the field. One might be a professor of law and one might be someone familiar with, for example, lobbying, to undertake the interfacing with stakeholders, politicians and others, and then to work with our Corruption Prevention Division. The outcome would have the authority of recognised experts in the field and of the Commission itself. The problems you have identified are not one-off situations. It is an ongoing systemic issue that I agree needs to be approached, examined and investigated, perhaps not in the traditional way but by using a process such as the one I have just outlined.

Mr RON HOENIG: Public sector organisations must guard against going through a process for the sake of it and then providing a substandard service. One of my four councils requires three quotes, but the quality of the quotes does not matter. The same service provider keeps getting all the work, but they have three quotes. There are always mechanisms available to use the Commission's recommendations to get around what it might have wanted to achieve. More significantly, they might adopt a lower quality service or not provide a service simply on the basis of complying with some Commission recommendation, which actually does not go to the integrity of the decision-making process. You do not want people fearful of making decisions because somehow or other it is contrary to the Commission's recommendation. You just want to make sure these public sector organisations do not throw the baby out with the bathwater.

Mr HALL: Yes, I understand the point you are raising.

Mr RON HOENIG: I would like to have some discussions with your Corruption Prevention Head because that is something that probably needs to be addressed.

Mr HALL: We would welcome that engagement.

The CHAIR: Thank you very much for being here this morning, Commissioners, and your staff. It has been very productive. If we need to put any additional questions to you I take it you are happy to answer those questions.

Mr HALL: We are, of course. Thank you.

(The witnesses withdrew)

(The Committee adjourned at 12.30 p.m.)